

23. DUTY OF FAIR REPRESENTATION

23.1: Definition

“Section **39-31-205, MCA**, provides the standard of duty the union owed its members, viz., that it may not discriminate between its members in its duty to fairly represent the member’s grievance.” **Ford v. University of Montana (1979)**

The union contended that “the Board [of Personnel Appeals] erred by making no finding related to discrimination, as is required for a conclusion that there has been a breach of the duty of fair representation.... A clear majority of circuit courts applying the holding of the Supreme Court [in Vaca] do not now require a finding of discrimination, bad faith or hostility on the part of the union to prove breach of the duty of fair representation.” **ULP #24-77 District Court (1985)**

23.2: Refusal to Process Grievance [See also 47.21.]

“The provisions defining unfair labor practices in **29 USC §158(b)** are very comprehensive and cover a much broader scope than does **§39-31-402** which is limited to a circumstance which may be more strictly construed. Therefore we reject the assumption that refusal to process a grievance is an unfair labor practice within the meaning of **§39-31-402** and hold that the District Court has jurisdiction in this matter.” **Ford v. University of Montana (1979)**

“The action or lack of action by the Teamsters [in processing McCarvel’s grievance], while not motivated by hostility, was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation.” **ULP #24-77**

Stuart McCarvel was hired as a bookmobile driver. He discovered at the end of his first pay period that half his weekly hours were compensated at the rate for a driver and half at the lower rate for a clerk. The union refused to file a grievance on his behalf because of an oral agreement between the union and the city that drivers would be paid in that fashion. After filing an unfair labor practice, the Board of Personnel Appeals found that the union had breached its duty of fair representation. On appeal from the district court decision, the Montana Supreme Court held “that the Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation.” **ULP #24-77 Montana Supreme Court (1981)**

23.25: Refusal to Process Grievance – Failure to Properly and Effectively Process

The Union “has breached its fiduciary duty of fair representation by failing to accept and process the grievance of Stuart Thomas McCarvel. It has restrained this employee in the exercise of his rights guaranteed under subsection (2) of

Section **59-1603** and in doing so is in violation of Section **59-1605(a) RCM 1947.** **ULP #24-77**

The District Court was correct in affirming the Board's order and the Board's finding that "the Local failed to fairly represent McCarvel in handling his claim for overtime pay." **ULP #24-77 Montana Supreme Court (1986).**

"[I]t is settled under federal labor law and therefore under Montana labor law that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner. . . ." **ULP #24-77 Montana Supreme Court (1986).**

23.26: Refusal to Process Grievance – Negligent or Irresponsible Conduct

"The Board's conclusion that the Union's conduct was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation is firmly supported by the law and the facts." **ULP #24-77 District Court (1985)**

"Even unintentional acts or omission by union officials may be considered arbitrary if they reflect reckless disregard for the rights of individual employees, if they severely prejudice the injured employee and if the policies underlying the duty of fair representation would not be served in shielding the Union from liability in the particular case. ***Robesky v. Qantas Empire Airlines Limited.*** . . . The more meritorious the grievance the more substantial the reason must be to justify abandoning it. ***Gregg v. Chauffeurs, Teamsters and Helpers Local 150.*** . . . We can think of few issues more meritorious and important to an employee than the issue of pay. The District Court's conclusion that the Union's conduct was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation is firmly supported by the law and the facts." **ULP #24-77 Montana Supreme Court (1986).**

23.4: Non-Bargaining Situations

"While a union owes its members a duty of fair representation in areas covered by collective bargaining, Section **39-31-205, MCA**; *Ford v. University of Montana* (1979) . . . , it is not required to represent members outside of collective bargaining.... Klundt was not attempting to resolve his claim through binding arbitration or internal union procedures. Instead he filed charges with the Board of Personnel Appeals, a state agency.... Klundt alleges that the Union requested the Board to put his charges on hold. Even if the Union does not owe Klundt a duty of fair representation in this case, that does not mean the Union has the right to affirmatively interfere with appellant's unfair labor practice charges.... Whether the charges themselves are meritorious or not, a 3-year delay may have prejudiced the appellant's handling of his claim." **ULP #38-80 Montana Supreme Court (1986)**

23.62: Actions for Breach of Duty – Liability of Employee Organization

“This order takes note of the rule handed down in *Vaca v. Sipes* wherein the US Supreme Court stated that the union must not be charged for damages which resulted from the employer’s breach of contract. Here we are ordering the Union to pay McCarvel’s attorney to do for him what the union should have done in the first place. If the union ... chooses not to take this avenue, they may pay directly to McCarvel the money he would have earned had his grievance been promptly and properly processed.” **ULP #24-77**

23.63: Actions for Breach of Duty – Liability of Employer

See **ULP #24-77**.

23.7: Remedies [See also 74.]

See **ULP #24-77 Montana Supreme Court (1981)**.